

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH

DATED THIS THE 11<sup>TH</sup> DAY OF JANUARY, 2023

BEFORE

**THE HON'BLE MR. JUSTICE V.SRISHANANDA**

**CRIMINAL PETITION NO.201668/2022**

**BETWEEN:**

SRI K. M. BASHA  
@ MAHABOOB BASHA  
S/O FAKEERSAB  
AGED ABOUT 39 YEARS,  
OCCU: CENTERING WORK,  
R/O BEHIND RANGANATHA  
SCHOOL, K.H.B. COLONY,  
MANVI, TQ. MANVI,  
DIST. RAICHUR -584123

**... PETITIONER**

(BY SRI ARUNKUMAR AMARGUNDAPPA, ADVOCATE)

**AND:**

THE STATE OF KARNATAKA  
THROUGH MANVI POLICE STATION,  
REPRESENTED BY ADDL. SPP,  
HIGH COURT OF KARNATAKA,  
KALABURAGI BENCH  
DIST. KALABURAGI-585103

**... RESPONDENT**

(BY SMT. MAYA T.R., HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO ALLOW THE PETITION AND FURTHER QUASH PROCEEDINGS IN C.C.NO.1173/2021 (ARISING OUT OF CRIME NO.160/2020), PENDING ON THE FILE OF CIVIL JUDGE AND JMFC, AT MANVI REGISTERED ON THE CHARGE SHEET FILED BY THE RESPONDENT MANVI POLICE, FOR THE ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 505(1)(A) (B) AND 2 OF IPC.

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Heard learned counsel for the petitioner and the learned High Court Government Pleader.

2. The present petition is filed under Section 482 of Cr.P.C. with the following prayer :-

*"Wherefore, it is most humbly prayed before this Hon'ble court to allow the petition and further quash proceedings in C. C. No. 1173/2021 (arising out of Crime No.160/2020), pending on the file of Civil*

*Judge & JMFC, At Manvi registered on the charge sheet filed by the respondent Manvi Police, for the alleged offences punishable under sections 505 (1) (a) (b) & 2 of IPC, in the ends of justice."*

3. Brief facts which are necessary for disposal of the petition are as under :

A complaint came to be lodged by Police Sub-Inspector Law and Order of Manvi police against the accused in crime No.160/2020 for the offences punishable under Section 505(1)(a), 505(1)(b) and 505(2) of IPC. Gist of the report lodged by Police Sub-Inspector reveals that on 05.10.2020, on the facebook page of K.M.Basha, he had posted a message wherein purportedly a soldier of Pakistan was conversing with a lady with the words "Har dil ki awaaz Pakistan zindabad". He further shared the said message with his friends on facebook. On receipt of such information, the Police Sub-Inspector went to the

Tahsildar Office at about 12.30 pm., and enquired with the person standing there. He revealed his name as K.M.Basha, resident of KHB colony, Manvi. On enquiry, he admitted that he shared the said message. He also shown the said message in his mobile and on 06.10.2020 morning, he deleted the same. Based on the same, Police Sub-Inspector complained to the Station House Officer with the report stating that sharing such message would amount to insulting the soldiers of our country resulting in demoralizing them and also disturbing peace and tranquility of the society and therefore, Police Sub-Inspector sought for action. The matter was thereafter investigated and cognizance was taken by the learned Magistrate and case is now pending in C.C.No.1173/2021.

4. Being aggrieved by the same, the petitioner has sought for quashing of further proceedings on the following grounds:

- *"The registration of crime against the petitioners/accused by the respondent police is illegal, arbitrary and amounts to abuse of process of law and court. Therefore the same calls for interference of this Hon'ble court to pass orders quashing the said proceedings initiated against the petitioner.*
- *That even if the allegations made in the complaint & charge sheet is taken as true the same will not constitute the offences alleged. Therefore to prevent abuse of process of court or otherwise to secure ends of justice proceedings are to be quashed initiated against the petitioners.*
- *That, no sanction is obtained from the State Government or the Central Government in order to prosecute the petitioner. The other contention that Section 196 (1) of the Code*

*prescribes that no Court shall take cognizance of any offence under Section 505 of IPC without the previous sanction of the Central Government or the State Government is given and without the sanction, the charge sheet has been filed against the petitioner and hence the very initiation of the proceedings against the petitioner is with mala-fides and made with sole intention to harass the petitioner and also on perusal of the complaint and FIR it shows that ingredients of the offences alleged under Sections 505 (1) (a) (b) & (2) of IPC are neither made out nor stated and the very complaint is false, fabricated and lodged with a sole intention to harass the petitioner and hence the proceedings initiated against the petitioner is liable to be quashed.*

- *Section 196 (1) clearly mandates that any offence punishable under Section 505 previous sanction of the Central Government or of the State Government or of the District Magistrate has to be obtained, after obtaining such sanction only*

*the Magistrate can take cognizance of the offence and issue process. In the instant case no such sanction or permission is obtained by the investigating agency before initiation of criminal proceedings against the petitioner which is bad in law. Accordingly the impugned order calls for interference by this Court.*

- *There is no compliance of the provision of Section 196(1) (a) of Cr.P.C., also that for the offence punishable under Section 505 of IPC prior sanction is necessary and so also investigation is improper as there is no compliance of Section 196 (3) of Cr.P.C. On careful perusal of the section 196 (1) of Cr.P.C., it is crystal clear that before a cognizance is taken by the learned Magistrate for the offence punishable under Section 505 IPC, prior sanction under section 196(1) (a) of Cr.P.C is necessary. Further, before Such a sanction could be granted preliminary investigation to be conducted in respect of the offence punishable under Section 505 of IPC, the Competent Authority must authorize the*

*person as is contemplated under Section 196(3) of Cr.P. C. In the case on hand, as could be seen from the material on record, especially charge- sheet materials, there is no sanction order nor there is any mention made in the charge-sheet so as to find-out that the competent person as is contemplated under Section 196(3) of Cr.P.C was permitted to carry out the investigation after conducting the preliminary investigation. Accordingly, the charge sheet is vitiated and further action thereof is also non-est.*

- That even if it is assumed that the alleged allegations constitute an offence, but there is no legal evidence adduced or collected by the prosecution therefore; manifestly the prosecution fails to prove the same. Under these circumstances to secure ends Justice and to prevent abuse of process of law, the proceedings are liable to be quashed.*
- Viewed from any angle, proceedings initiated is not only unfair and unjust, but also is not proper use of the process of law*



*and hence the proceedings is liable to be quashed.*

5. Reiterating the grounds urged in the petition, learned counsel for the petitioner Sri Arunkumar Amargundappa, vehemently contended that action initiated by the police and taking cognizance by the learned Magistrate is opposed to law and sought for quashing of the same.

6. In this regard he places reliance on the order passed by this Court in CrI.P.No.201547/2021 dated 06.01.2022.

7. *Per contra*, learned High Court Government Pleader opposed the grounds urged in the petition and contended that order taking cognizance by the learned Magistrate is just and proper and sought for dismissal of the petition.

8. In view of the rival contentions of the parties, this Court perused the material on record meticulously.

9. Admittedly for the offences punishable under Section 505 of IPC, prior sanction is necessary. Further the report of the Police Sub-Inspector has not been properly registered while being investigated. Necessary compliance as to the provisions of Section 196(1) of Cr.P.C., is not followed.

10. In order to appreciate the rival contentions of the parties, it is necessary for this Court to cull out Section 196 of Cr.P.C., which reads as under:

***"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence. -***

*(1) No Court shall take cognizance of-*

*(a) any offence punishable under Chapter VI or under section 153A, <sup>2</sup>[section 295A or sub section (1) of section 505] of the Indian Penal Code (45 of 1860 ) or*

- (b) *a criminal conspiracy to commit such offence, or*
- (c) *any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.*

*[(1A) No Court shall take cognizance of-*

- (a) *any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860 ), or*
- (b) *a criminal conspiracy to commit such offence,*

*except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]*

*(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal code (45 of 1860), other than a criminal conspiracy to commit <sup>2</sup>[an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:*

*Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.*

*(3) The Central Government or the State Government may, before according sanction<sup>3</sup> [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.*

11. On perusal of the above provisions, it is crystal clear that before taking cognizance by the learned Magistrate for the offences punishable under Section 505 of IPC, prior sanction under Section 196(1)(A) of Cr.P.C., is necessary.

12. It is also clear from the above provisions that before such a sanction could be granted, preliminary investigation is to be conducted in respect of the offence punishable under Section 505 of IPC by the competent authority by a person as is contemplated under Section 196(3) of Cr.P.C.

13. On perusal of the material on record in the case on hand, no such compliance has been made. Therefore, the following order is passed:

ORDER

Criminal petition is allowed.

The charge sheet filed by the Manvi Police in respect of Crime No.160/2020 for the offences punishable under Sections 505(1)(a), 505(1)(b) and 505(2) of IPC and cognizance taken by the learned Magistrate in pursuance of the charge sheet filed in the said Crime No.160/2020 is hereby quashed.

Pending proceedings in C.C.No.1173/2021 is hereby quashed.

However, quashing of the order dated 12.07.2021 would not prevent the investigating agency to comply the provisions of Section 196 of Cr.P.C., and investigate the matter afresh in accordance with law, and if sufficient materials are found in such investigation, the investigating agency is at liberty to file necessary charge sheet and proceed with the case in accordance with law.

**Sd/-  
JUDGE**

VNR